



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1994

Mr. Edward H. Perry  
Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR94-164

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 21327.

The Dallas Police Department (the "department") has received a request for "a copy of the file of the Internal Affairs Division investigation into the shooting-death of Detective Lawrence Bromley, dated December 11, 1991." You claim that portions of the requested information are excepted from required public disclosure under sections 552.108, 552.111, 552.117 and 552.119 of the Government Code.

You state that the city has previously released the requested information to a different requestor with information deleted relating to "police procedures, equipment and tactics, the identity of a confidential informant, and photographs or home addresses of police officers." You have sent a representative sample of the file as Exhibit B and "marked in yellow the information [you] deleted for the [previous] request[or]." Section 552.111 of the Government Code is a "permissive exception" and may be waived by the governmental body. See Open Records Decision No. 522 (1989). Because you previously have released the requested information except for information relating to "police procedures, equipment and tactics, the identity of a confidential informant, and photographs or home addresses of police officers" you may not withhold any of the

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

requested information under section 552.111 of the Government Code. *See* Open Records Decision No. 400 (1983) (city department that showed report on employee misconduct to members of the public waived section 552.111).

Section 552.108 excepts

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You claim that releasing the marked information "could endanger the lives of the officers who rely on the secrecy of their tactics and techniques." We agree. The requested information concerns an undercover narcotics operation where the secrecy of tactics, techniques, equipment, and code words used by undercover officers is a fundamental part of a successful operation. *See* Open Records Decision No. 341 (1982) (release of codes used by Department of Public Safety would prevent detection of forged drivers' licenses). Because the records on their face as well as the arguments you have presented indicate that the release of the requested information would unduly interfere with law enforcement and crime prevention, you may withhold the type of information you have marked from required public disclosure under section 552.108 of the Government Code.

Sections 552.117(1)(B) and 552.119 exempt from public disclosure specific information regarding a peace officer as defined by article 2.12 of the Code of Criminal Procedure or a security officer commissioned under section 51.212 of the Education Code.<sup>2</sup> You have not submitted any information that contains home addresses, home telephone numbers, or identifying photographs of peace officers. However, if such information exists in the remaining information not submitted to our office and it relates

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<sup>2</sup>Section 552.117(1)(B) excepts the home address or home telephone number of peace officers and section 552.119 excepts photographs of peace officers. Gov't Code §§ 552.117(1)(B), 552.119.

to an individual who was at the time the information was created or who is currently a peace officer as defined by article 2.12 of the Code of Criminal Procedure or a security officer commissioned under section 51.212 of the Education Code, you may withhold such information under sections 552.117(1)(B) and 552.119 of the Government Code.<sup>3</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/LBC/rho

Ref.: ID# 21327

Enclosures: Submitted documents

cc: Ms. Cynthia Bromley  
1010 Santa Fe Trail  
Grand Prairie, Texas 75052  
(w/o enclosures)

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<sup>3</sup>We note that a photograph of an officer who is under indictment or charged with an offense by information; party to a fire or police civil service hearing or a case in arbitration; or a photograph of an officer that has been introduced as evidence in a judicial proceeding may not be withheld under section 552.119. Gov't Code § 552.119(a)(1) - (3).